HARBHAJAN SINGH v. PUBLIC PROSECUTOR

[O.Cr.J. (Abdul Razak J.) July 14, 1979]

[Kuala Trengganu — Miscellaneous Criminal Application No. 01 of 1979]

Practice and Procedure — Jurisdiction — Whether High Court could allow application to extend time — Scope of section 66(1) of Courts of Judicature Act.

In this case the applicant had been convicted and sentenced for an offence under section 420 of the Penal Code. He applied for reference to the Federal Court under section 66(1) of the Courts of Judicature Act. As the application was out of time he applied to the High Court for extension of time.

Held: it has become a matter of practice, if not of procedure, that all applications to enlarge the time for doing any act or taking any proceeding must be made in the first instance, to the court or person who has jurisdiction to deal with the *substance* of the matter in relation to which the extension of time for a step to be taken, is required.

MISCELLANEOUS CRIMINAL APPLICATION.

Subash Chandran for the applicant.

Mohamed Ghazali bin Datuk Mohamed Yusof (Deputy Public Prosecutor) for the respondent.

Abdul Razak J.: This is an application for reference to the Federal Court under section 66(1) of the Courts of Judicature Act.

The applicant was charged for an offence under section 420 of the Penal Code for which he was convicted by the court below and sentenced to one day's imprisonment and fined $1,000 in default six months' imprisonment. He then appealed before me against the conviction when his appeal was dismissed when he was ordered in a cross-appeal to serve an imprisonment of two months instead without the penalty of a fine. He has served his sentence but nevertheless makes this application for a reference under section 66(1) on a point of law of public interest which required determination by the Federal Court.

But, first, there was an obstacle under subsection (2) of the said section to be overcome. An application under it must be made within one month of the determination by the High Court or such longer time as the Federal Court may permit. Counsel conceded his application was out of time and duly applied therefore to me to extend it. But, do I have the jurisdiction or concurrent jurisdiction? According to him, subsection (2) should be read to mean, in spite of the clear words of the subsection, referring it only to the Federal Court, either the High Court or the Federal Court. Two reasons were advanced for this line of contention. Firstly, that the application for reference to the Federal Court must initially be made to the judge in the High Court under subsection (1) and therefore the High Court under its inherent jurisdiction would have the power to extend the time under Order 64 rule 7 of the Supreme Court Rules as much as the Federal Court. And under Order 58 rule 17 whenever an application may be made either to the High Court or the Court of Appeal, it shall be made in the first instance to the High Court. Therefore, the High Court, counsel argued, is the proper court before which the present application should be made. Secondly, although it is taken with less vigour, it was argued that to construe subsection (2) to mean only the Federal Court would render it to be treated with abuse because a party could, for the purpose of getting an extension, dwell into the merits of the case whether it was a proper case before the Federal Court for reference when the matter would have reached finality at the High Court or at any rate, when the matter was still *sub-judice* before the High Court. It was argued that the Federal Court might be misled to give the extension for a wrong reason.

I am constrained to say despite the somewhat ingeniously well taken argument that it has become a matter of practice, if not of procedure, that all applications to enlarge the time for doing any act or taking any proceeding must be made in the first instance, to the court or person who has jurisdiction to deal with the *substance* of the matter in relation to which the extension of time for a step to be taken, is required. Clearly, in this instance, the court which has jurisdiction to deal with the substantive matter, that is, whether the High Court was right in law, in deciding against the accused, can be no other court but the Federal Court.

I need hardly say that insofar as it is urged that it would prejudice the Federal Court in giving the extension of time for a wrong reason, it is hardly necessary for me to say. That must be left to the better judgment of the Federal Court to decide. Needless to say, if step was taken to go into the merits of the case, it must simply be for the purpose of finding whether the application for the extension of time has merit.

In the premises, I would therefore dismiss the application. I need only add that in the circumstances, I need hardly go into the merits of the application, whether there was a question of law of public interest for reference to the Federal Court.

Application dismissed.

Solicitors: *Subash Chandran & Co.*